

ORDINANCE NO. 5823

AN ORDINANCE OF THE BOARD OF SUPERVISORS, COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING ARTICLE III, CHAPTER 12 OF THE SONOMA COUNTY CODE TO CLARIFY THE INTENT AND PURPOSE OF THE PROVISIONS CONTAINED THERIN

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

SECTION I. Findings and Purpose.

1. Removing complimentary room tax which is desirable both by the County and the lodging industry.
2. Board desires to clarify original intent and purpose of provisions.
3. Taxes will not be increased nor will scope of coverage of ordinance be increased as a result of the proposed code revisions.

SECTION II. Revisions to County Code.

Article III of Chapter 12 of the Sonoma County Code is amended to read:

For the purposes of this article, the following words and phrases shall, except where the context otherwise requires, have the meanings respectively ascribed to them by this section:

"Guest of Owner" means a person who occupies a room or other living space accompanied by the owner or exercises that owner's right of occupancy without payment of any rent, as defined in this ordinance, to the owner or representative of the owner.

"Lodging" means any accommodation consisting of one (1) or more rooms, or other living spaces which are occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes. Such term includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, dormitory, public or private club, recreational vehicle park, or public or private campground, including campgrounds that are seasonal, year-round or event based (camping is offered in association with fairs, festivals, or other special events). The term "lodging" does not include an organized camp, as that term is defined by Section 18897 of the California Health and Safety Code, or its successor statute.

"Room or other living space" means room or portion of any room in any lodging; any tent

cabin or any space designated for location of a mobile home or house trailer, tent trailer, recreational vehicle, tent or other movable living space.

"Occupancy" means the use or possession, or the right to the use or possession of any one or more rooms or portion thereof, or other living space, in any lodging for dwelling, lodging or sleeping purposes.

"Operator" means the person who is proprietor of the lodging, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this article, and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.

"Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, any other group or combination acting as a unit or any public agency.

"Rent" means consideration regularly charged, for the occupancy of space in a lodging valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature required to be paid as part of the cost of occupancy, without any deduction therefrom whatsoever, including but not limited to any of the following:

- (a) any and all expenses required to rent the room or lodging, including but not limited to charges such as housekeeping or cleaning fees, linens, energy charges, resort fees, and the like, whether charged all inclusively or separately;
- (b) charges for roll-away beds
- (c) the fair market value of lodging provided as part of a package that includes other goods or services (e.g. a room and golf package);
- (d) consideration actually charged to the occupant for rooms sold to tour operators, meeting planners, or any other party that resells rooms (e.g. Travelocity, Expedia);

Notwithstanding the foregoing, "Rent" does not include consideration or charges received by an Operator for any of the following:

- (a) use of banquet or meeting rooms
- (b) occupancy of space in a lodging by a pet owned by a Transient;
- (c) childcare services
- (d) use of safes or other secure storage areas;
- (e) food or meals;
- (f) pay-per-view movies, video games, telephones, internet and the like; or
- (g) cancellation charges.

"Tax Collector" means the Sonoma County Auditor-Controller/Treasurer-Tax Collector and/or designated deputy.

"Transient" means any person, except the owner of a lodging, who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement for a period of thirty (30) consecutive calendar days or less, counting portions of calendar days as full days. Any such person so occupying space in a lodging shall be deemed to be a transient until the period of thirty (30) days has expired unless there is an agreement in writing between the Operator and the occupant providing for a longer period of occupancy.

Sec. 12-11. Imposition of tax—payment of tax by transient.

For the privilege of occupancy at any lodging, each transient is subject to and shall pay a tax in the amount of nine (9) percent of the rent charged. Said tax constitutes a debt owed by the transient to the county which is extinguished only by payment to the Operator or to the county. The transient shall pay the tax to the Operator of the lodging at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space at the lodging. It is the responsibility of the Operator to collect the tax. If, for any reason, the Operator fails to collect the tax due at the time the rent is collected, the Operator becomes liable for the tax due.

Sec. 12-12 Exemptions

No tax levied by this article shall be imposed upon:

- (a) Any person as to whom, or any occupancy as to which, it is beyond the power of the county to impose the tax herein provided;
- (b) Any federal or state officer or federal credit union employee when on official business;
- (c) Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty;
- (d) Rooms donated to or paid for by the Red Cross or other charitable organization for the express purpose of providing temporary emergency shelter;
- (e) Complimentary stays where no Rent is received;
- (f) The owner of a timeshare estate occupying a room or rooms in a timeshare project, as defined in Business and Professions Code section 11212 or its successor statute.
- (g) The owner of a membership camping contract as defined in Civil Code section 1812.300.

No exemption shall be granted except upon a claim therefore made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator. No exemption form is required for items (e), (f), or (g).

Sec 12-13. Collection of tax by Operator—Advertisements of assumption of tax, etc., prohibited.

Each Operator shall collect the tax imposed by this article to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the Operator. No Operator of a lodging shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the Operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner provided by this article.

Sec 12-14. Registration.

In order that the county will have an accurate record of parties collecting transient occupancy tax, each lodging Operator will be required to register as hereinafter provided.

(a) Prior to commencing business each Operator of any lodging renting occupancy to transients shall register such lodging with the Tax Collector, submitting any information deemed necessary by the Tax Collector, including, but not limited to, the following:

- (1) Name of Lodging Facility
- (2) Type of Lodging Facility (Hotel, Motel, Campground, Bed and Breakfast, etc.)
- (3) Type of Ownership (Individual, Corporation, Partnership, etc.)
- (4) Name of owner and/or Operator (if corporation or partnership names of officers or partners)
- (5) Name, address and phone number of person preparing reports and remittances
- (6) Mailing and physical addresses of lodging facility
- (7) Mailing address of corporate or partnership office(s)
- (8) Phone number of facility and Operator
- (9) Starting date of business
- (10) Number, type and rental rate of lodging units within lodging facility
- (11) Authorized signature and date
- (12) If registration information is submitted by a rental agency, a listing of other lodging properties managed by that rental agency

The Operator shall also obtain from the Tax Collector a registration certificate to be at all times posted in a conspicuous place on the premises. Registration certificate shall, among other things, state the following:

- (1) Name and address of the lodging
 - (2) Name of the Operator
 - (3) Name and address of owners
 - (4) Registration certificate number and date issued;
- (b) The registration certificate is not transferable, and is to be returned to the Tax

Collector upon sale of property or cessation of business along with the final remittance of transient taxes due.

- (c) The Operator named on the face of this registration certificate shall be responsible to collect from transients the transient occupancy tax and remitting such tax to the Tax Collector. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a lodging without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department, or office in this county.
- (d) It shall be the responsibility of the owner of the lodging to report in writing all changes of Operators or operations to the Tax Collector immediately including, but not limited to, any change in operations, mailing address, number of rooms, or changes in ownership.
- (e) A registration certificate may be revoked by the Tax Collector upon failure to comply with any provision of this article. Revocation by the Tax Collector may be appealed to the Board of Supervisors as provided in Section 12-21. An appeal of revocation as provided herein will stay the revocation until the Board of Supervisors issues its decision.
- (f) Operation without a valid registration certificate shall be a misdemeanor and shall be punishable as provided by Section 1-7 of Sonoma County Code. Each day of operation without a valid registration certificate shall be deemed to be a separate offense.

Sec. 12-15. Reports and remittances.

Each Operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Collector, make a return to the Tax Collector, on forms provided by him, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the return is filed, the full amount of the tax collected shall be remitted to the Tax Collector. The Tax Collector may establish shorter reporting periods for any certificate holder if he deems it necessary in order to insure collection of the tax and he may require further information in return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by Operators pursuant to this article shall be held in a separate trust account, apart from the rents or business revenues of the hotel, for the benefit of the county until payment thereof is made to the Tax Collector.

Sec 12-16. Penalties for delinquent payment.

- (a) Base Tax Defined. For purposes of this section, "base tax" means the tax to be collected by an Operator pursuant to Section 12-13 (i.e., 9% of the taxable room rents to be collected within the reporting period).

- (b) Original Delinquency. Any Operator who fails to remit any base tax imposed by this article within the time required shall pay a penalty of ten (10) percent of the amount of the base tax in addition to the amount of the base tax, provided that the base tax and penalty are remitted within a period on or before thirty (30) days following the base tax due date.
- (c) Continued Delinquency. Any Operator who fails to remit any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent shall pay the base tax and the ten percent penalty imposed by subsection (b), plus a second delinquency penalty of ten (10) percent of the amount of the base tax.
- (d) Fraud. If the Tax Collector determines that the nonpayment of any remittance due under this article is due to fraud, a penalty of twenty-five (25) percent of the amount of the base tax shall be added thereto in addition to the penalties stated in subsections (b) and (c) of this section.
- (e) Interest. In addition to the penalties imposed, any Operator who fails to remit any base tax imposed by this article shall pay interest at the rate of one and one-half (1½) percent per month on the unpaid balance of the base tax, from the date on which the remittance first became delinquent until paid in full.
- (f) Penalties Merged with Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax required by this article to be paid.
- (g) Security Bond. The Tax Collector is authorized to require any Operator who has failed to file two (2) or more returns or payments, or who has filed two (2) or more delinquent returns or payments, in any twelve (12) month period, to deliver to him a security bond equal to three (3) times the anticipated tax collected for the highest delinquent reporting period. Failure to post a bond in a form acceptable to the Tax Collector when requested to do so shall be grounds for revocation of an Operator's certificate of registration as provided in section 12-14(e).

Sec. 12-17. Determination of tax by Tax Collector upon default of Operator.

If any Operator shall fail or refuse to collect the tax levied by this article or to make, within the time provided in this article, any report and remittance of such tax or any portion thereof required by this article, the Tax Collector shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the Tax Collector shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax imposed by this article and payable by any Operator who has failed or refused to collect the same or to make such report and remittance, the Tax Collector shall proceed to determine and assess against such Operator the tax, interest and penalties provided for by this article. In any case where determination is made, the Tax Collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United States mail, postage prepaid,

addressed to the Operator at his last known place of address.

The Operator may, within ten (10) calendar days after the serving or mailing of such notice, make application in writing to the Tax Collector for a hearing on the amount assessed. Refer to Section 12-21-1 Appeals.

Sec. 12-18-1. Records to be kept.

It shall be the duty of every Operator liable for the collection and payment to the county of any tax imposed by this article to keep and preserve, for a period of five (5) years, all records that may be necessary to determine the amount of such tax as he may have been liable for the collection of and payments to the county under this article. At a minimum, the records deemed necessary for this determination shall be a chronological cash journal showing tax and room rate separately, or other means acceptable to the County Auditor-Controller/Tax Collector of summarizing the Operator's monthly or quarterly revenue, supported by room registrations (including the name and address of the transient), the automobile license plate number of the transient, a calendar of advance registrations, copies of forms used to claim exemption from the tax, and prenumbered payment receipts showing payment for occupancy which state the room rate separate from the amount of tax paid and which may, with reasonable effort, be identified with the revenue summary. These records shall be available, at all times, for inspection by the County Auditor-Controller/Tax Collector or his deputies. Performance of an audit does not waive the county's right to any tax or the five (5) year requirement of preserving records.

Sec 12-18-2. Change of ownership or Operator

- (a) In the event that there is a change in ownership or Operator of any lodging facility, the new owner or Operator is required to submit an updated registration form to the Tax Collector.
- (b) Unless otherwise provided by law, upon the sale of any lodging facility:
 - (i) it is the joint and several liability of both the seller and buyer to remit any tax due up until the date of sale; and
 - (ii) A Certificate of Delinquent Transient Occupancy Tax Lien may be filed against both the seller and/or buyer in an amount determined by the Tax Collector.
- (c) Following any change of ownership or Operator, the new owner and Operator are subject to an audit by the County Tax Collector/ Auditor-Controller or deputies.
- (d) Any owner of a lodging facility required to collect or pay transient occupancy tax may apply for and receive within 90 days of application, an Occupancy Tax Clearance Certificate, provided that the taxes and any penalties are paid in full for the time period specified.

Sec. 12-19. Refunds.

- (a) If a tax, interest or penalty imposed by this article has been overpaid or paid more than once or has been erroneously or illegally collected or received by the county, a refund may be sought by filing a claim according to the procedure established in Sonoma County Code Chapter 2, Art. XXV.
- (b) No claim for refund of a tax may be filed by an Operator unless it is established in the claim that the amount of the tax so collected has either been refunded to the person or entity that actually paid the tax, or has been credited to rent subsequently payable by such person or entity to the Operator.

Sec. 12-20. Tax due deemed debt to county—Actions to collect.

Any tax required to be paid by any transient under the provisions of this article shall be deemed a debt owed by the transient to the county. Any such tax collected by an Operator which has not been paid to the county shall be deemed a debt owed by the Operator to the county. Any person owing money to the county under the provisions of this article shall be liable to an action brought in the name of the county for the recovery of such amount. The county shall be entitled to recover from anyone found liable for the debt, any costs, including attorney's fees, personnel costs, or other expenses incurred by the county because of the failure to timely remit tax proceeds to the County.

Sec. 12-21-1. Appeal to Tax Collector.

Any Operator aggrieved by any decision of the Tax Collector with respect to the amount of the tax imposed by Section 12-17 or by audit, and interest and penalties, if any, shall first appeal to the Tax Collector.

- (a) Request must be made in writing within ten (10) calendar days after the serving or mailing of notice per Section 12-17, to the Tax Collector to appeal the decision on the amount assessed.
- (b) At such hearing, the Operator may appear and offer evidence why such specified tax, interest and penalties should not be so fixed.
- (c) After such hearing the Tax Collector shall determine the proper tax to be remitted and shall thereafter give written notice to the person in the manner prescribed in Section 12-17 of such determination and the amount of such tax, interest and penalties. The Tax Collector's determination shall be presumed to be correct. At any appeal, the Operator has the burden of proving that the Tax Collector's determination is incorrect, and the burden of producing sufficient evidence to establish the correct tax liability. The amount determined to be due shall be payable after thirty (30) calendar days unless it is appealed to the Board of Supervisors.

Sec. 12-21-2. Appeal to Board of Supervisors.

Failing a resolution with Tax Collector Appeal process, the Operator may then

- (a) appeal to the Board of Supervisors by filing a notice of appeal with the County Clerk within ten (10) calendar days of the serving or mailing of the determination by the Tax Collector of the amount of tax due.
- (b) The Board of Supervisors shall fix a time and place for hearing such appeal, and the County Clerk or Tax Collector shall give notice in writing to such Operator at his last known place of address. The Tax Collector shall present the matter to the Board and include evidence submitted by the Operator.
- (c) The Tax Collector shall also include proposed findings and a resolution of the appeal. At the hearing, both the Tax Collector and the owner or Operator shall have an opportunity to explain their case and introduce other statements or evidence. The Board may impose reasonable time limits on each party's presentation.
- (d) The findings of the Board of Supervisors shall be final and conclusive and shall be served upon the appellant in the manner prescribed in Section 12-17 for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

Sec. 12-22. Tax lien.

- (a) The Tax Collector is authorized to record a Certificate of Delinquency of Transient Occupancy Tax Lien with the Sonoma County Recorder against any Operator who fails to remit taxes, penalties, or interest due under this article within the times required herein. The Tax Collector shall add to the amount of the lien the costs incurred by the County in collecting the tax due, such costs specified in Sec. 12-20 above. The Certificate of Delinquency of Transient Occupancy Tax Lien may be filed by the Tax Collector:
 - (1) Ten (10) days after the serving or mailing of the notice required by Section 12-17, if the Operator does not file the application for appeal permitted by Section 12-21-1(a).
 - (2) If the Operator files the application for appeal permitted by Section 12-21-1(a), thirty (30) days after the Tax Collector's determination of the amount of tax to be remitted pursuant to 12-21-1(c), unless the Operator files an appeal pursuant to Section 12-21-2(a).
 - (3) If the Operator files an appeal pursuant to Section 12-21-2, ten (10) days after service of the Board of Supervisor's findings pursuant to Section 12-21-2.

The Certificate of Delinquency of Transient Occupancy Tax Lien shall be filed within three years after the tax becomes due. The Certificate of Delinquency of Transient Occupancy Tax Lien shall specify the amount due, the name and last known

address of the Operator liable for the same, and a statement that the Tax Collector has complied with all provisions of this article with respect to the computation and levy of the tax owed by the Operator. From the time of the recording of the Certificate of Delinquency of Transient Occupancy Tax Lien, the amount required to be paid, together with penalties, constitutes a lien upon all real property in the county owned by the Operator or thereafter acquired before the lien expires. The lien has the force, effect, and priority of a judgment lien and shall continue for ten years from the filing of the Certificate of Delinquency of Transient Occupancy Tax Lien, unless sooner released or otherwise discharged. Within ten years of the date of the recording of the Certificate of Delinquency of Transient Occupancy Tax Lien (or within ten years of the date of the last extension of the lien), the Tax Collector may extend the lien by filing for record a new certificate in the office of the Sonoma County Recorder, and from the time of filing the lien under the original Certificate of Delinquency of Transient Occupancy Tax Lien shall be extended for an additional ten years, unless sooner released or otherwise discharged. The lien shall not be removed until the delinquent taxes, penalties for delinquency, and costs of collection are fully paid or the property is sold for payment of the delinquent taxes, penalties for delinquency, and costs of collection.

- (b) At any time within three years after the recording of a Certificate of Delinquency of Transient Occupancy Tax Lien under subsection (a) above, the Tax Collector may issue a warrant directed to any sheriff or marshal for the enforcement of the lien and the collection of any tax and penalties required to be paid the County under this article. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to a writ of execution. The Tax Collector may pay or advance to the sheriff or marshal such fees, commission, and expenses for services as are provided by law for similar services pursuant to a writ of execution.
- (c) In lieu of issuing a warrant under subsection (b), at any time within the three years after a Certificate of Delinquency of Transient Occupancy Tax Lien was recorded under subsection (a), the Tax Collector may collect the delinquent amount by seizing, or causing to be seized, any property, real or personal, of the Operator and sell any non-cash or non-negotiable property, or a sufficient part of it, at public auction to pay the amount of tax due, together with any penalties, interest, and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be of property of the Operator not exempt from execution under the provisions of the Code of Civil Procedure.

Sec. 12-23. Violations and penalties.

- (a) Any person violating any of the provisions of this article shall be guilty of a misdemeanor and shall be punishable therefore as provided by Section 1-7.

- (b) Any Operator or other person who fails or refuses to register as required in this article, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Tax Collector, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as aforesaid and is subject to all sections of this Chapter.
- (c) Any person required to make, render, sign or verify any report or claim who makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due required by this article to be made, is guilty of a misdemeanor and is punishable as aforesaid.
- (d) In addition, the Tax Collector may pursue on behalf of the county, any civil or administrative remedy otherwise available for failure to comply with the requirements of this article. If the county prevails, the county shall be entitled to recover any costs, including attorney's fees, personnel costs or other expenses incurred because of failure to comply with the requirements of this article. Failure to pay such costs upon the demand shall be grounds for revocation of an Operator's certificate of registration as provided in Section 12-14 (e).

SECTION III. Retroactive Effect.

It is the intent of this Board that the amendments exempting complimentary rooms from transient occupancy tax be applied retroactively to rooms and lodging rented since January 1, 2007. Any claims for refund of tax already paid must be filed within one year of the effective date of this ordinance, in accordance with the procedures established in Sec. 12-19 of Chapter 2 Article XXV of the Sonoma County Code.

SECTION IV. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION V. Effective Date.

This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of

California.

In regular session of the Board of Supervisors of the County of Sonoma introduce on the 16th day of December 2008, and finally passed and adopted this 6th day of January, 2009, on regular call of the members of said Board by the following vote:

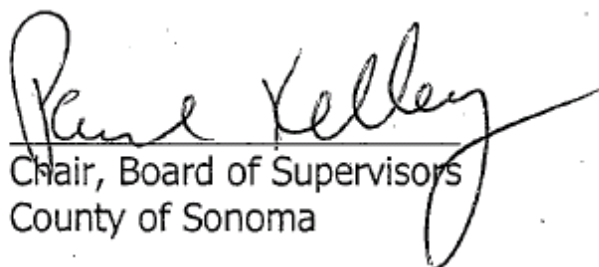
SUPERVISORS:

BROWN Aye **KERNS** Aye **ZANE** Aye **KELLEY** Aye **CARRILLO** Aye

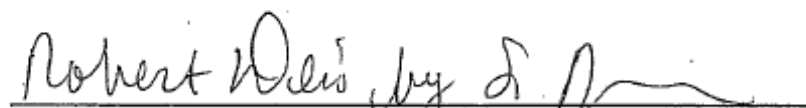
AYES 5 **NOES** **ABSTAIN** **ABSENT**

WHEREUPON, the Chair declared the above and foregoing ordinance duly adopted and

SO ORDERED.


Chair, Board of Supervisors
County of Sonoma

ATTEST:


Robert Deis, Clerk of the Board of Supervisors